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No. 886

In the Supreme Court of the United States

OCTOBER TERM, 1951

LEROY J. ROBERTSON, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR THE UNITED STATES

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OPINIONS BELOW

The opinion of the District Court (R. 29-31) is not reported. The District Court's findings of fact and conclusions of law (R. 8-11) are reported at 93 F. Supp. 660. The opinion of the Court of Appeals (R. 39-45) is reported at 190 F. 2d 680.

JURISDICTION

The judgment of the Court of Appeals was entered on July 10, 1951 (R. 45-46). By order of Mr.

Justice Clark, dated September 12, 1951, the time for filing a petition for a writ of certiorari was extended to November 1, 1951 (R. 46). The petition for a writ of certiorari was filed on October 19, 1951, and was granted on December 11, 1951 (R. 47). The jurisdiction of this Court rests on 28 U.S.C. Section 1254.

QUESTIONS PRESENTED

1. Whether a $25,000 cash prize received by petitioner as the winner of a symphony composition contest constituted gross income as defined in Section 22 (a) of the Internal Revenue Code, or whether it was a gift excluded from gross income by Section 22 (b) (3).

2. Whether, in computing the tax under Section 107(b) of the Internal Revenue Code, the income should be attributed to the thirty-six months ending with the close of the year in which it was received, or to the last thirty-six months of the petitioner's work on the symphony.

STATUTE AND REGULATIONS INVOLVED

These appear in the Appendix, *infra,* pp. 37-41.

STATEMENT

The facts as found by the District Court (R. 8-11) may be summarized as follows:

The petitioner is a musician and composer by profession. During the taxable year 1947, and for many years prior thereto, he was Professor of

Music at Brigham Young University, and later was similarly employed at the University of Utah. In 1936, he commenced work on a symphony named "Trilogy," and completed the work in 1939. Upon its completion, the work was placed in his files along with other completed musical compositions. (R. 8-9.)

In 1945, Henry H. Reichhold, a philanthropist, who was also president of the Detroit Symphony Orchestra, established a "Reichhold Music Award" contest whereby he offered three awards of $25,000, $5,000 and $2,500, respectively, for the best symphonic works written by native-born composers of North, Central, and South America. The underlying purpose of the contest was to further a spirit of understanding among the Pan American nations and to bring to the public the best new music written in the Americas. Winners of the awards were to be selected from among composers who submitted entries in accordance with published terms and conditions of the contest. (R. 9-11, 33-37.) The "Terms and Conditions" of the contest included the following (R. 35):

> 5. Compositions must not have been published or publicly performed, either in full or in part, prior to entry in this contest.
>
> * * * * *
>
> 10. Each composition receiving a Cash Award, Honorable Mention or a Certificate of Merit shall remain the property of the com-

poser except that he shall be required to grant to the Detroit Orchestra, Inc., a non-profit organization of Detroit, Michigan, all synchronization rights as applied to motion pictures and all mechanical rights as applied to phonograph recordings, electrical transcriptions and music rolls.

11. The Detroit Orchestra, Inc., also must be granted the exclusive right to authorize the first performance for each or all of the above named countries of compositions receiving Cash Awards, Honorable Mention or Certificates of Merit.

12. The Detroit Orchestra, Inc., shall also be granted the exclusive right to designate the publishers of compositions winning Cash Awards, Honorable Mention or Certificates of Merit.

13. The Detroit Symphony Orchestra plans to give at least one broadcast performance of each work receiving a Cash Award within one year from the date of the award. Each work receiving an Honorable Mention or a Certificate of Merit may be given at least one broadcast performance within one year from the date of the award.

Petitioner entered his composition "Trilogy" in the contest by filing an "Official Entry Blank" on or about February 18, 1946 (R. 9-10, 36). The entry blank which he signed recited the terms and conditions of the contest, and stated that he had read and agreed to all of them (R. 36).

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The composition entered by petitioner was selected by the award committee as the best one submitted, and he received the $25,000 cash award on December 14, 1947 (R. 10).

In his 1947 income tax return, petitioner included the $25,000 prize in his gross income (R. 10). He claimed the benefits of Section 107(b) of the Internal Revenue Code, and in doing so computed the tax as though the $25,000 had been received ratably during the years 1937, 1938, and 1939 (R. 2). Thereafter, he filed a claim for refund on the ground that the prize constituted a non-taxable gift (R. 2-3). The Commissioner rejected this claim, ruling that the prize represented taxable income, and determined a deficiency on the ground that the tax should have been computed under Section 107(b) as though the $25,000 had been ratably received over the three-year period ending with the close of the taxable year 1947 (R. 4). Petitioner paid the deficiency, filed a supplemental claim for refund, and then brought suit for refund (R. 4-6).

The District Court held that the prize received by petitioner constituted a gift and hence, under Section 22(b)(3) of the Internal Revenue Code, was to be excluded from his taxable income (R. 10-11, 29-31). The Court of Appeals reversed, holding that the prize was properly included in petitioner's gross income as defined in Section 22(a), and that the Commissioner had properly computed the tax under Section 107(b) (R. 39-45).

SUMMARY OF ARGUMENT

Petitioner received the $25,000 for a symphony which had taken him over three years to compose and in which he was required to relinquish various property rights to the Detroit Orchestra as a condition of receiving the prize. These undisputed facts afford no basis for the claim that the prize was a gift—given "for nothing", "gratuitously." Accordingly, the court below correctly held that the $25,000 constituted taxable income.

Section 22(a) of the Internal Revenue Code declares broadly that income in any form "derived from any source whatever" shall be taxable. As this Court's decisions make clear, the "obvious purpose" of Congress was "to tax income comprehensively," and the specifically stated exemptions, like the exemption for gifts in Section 22(b)(3), are to be "construed with restraint in the light of the same policy." *Commissioner* v. *Jacobson*, 336 U. S. 28, 48-49. To qualify for tax exemption as a gift, money or property must be received gratuitously, in exchange for nothing. Where, as in this case, a contest invites competitors to submit the products of their labors and promises awards based solely on the excellence of those products, the awards can neither factually nor legally be described as being given "for nothing." Applying the foregoing principles, the decision below correctly approves the long-settled views of the Treasury and the Tax Court that one who com-

petes for and wins a prize receives taxable income, not a gift.

The conclusion that the prize in this case was no gift is reenforced by the fact that petitioner was required, under the terms of the contest, to relinquish in exchange for the prize various property rights in his symphony. It is immaterial that these rights were surrendered to the Detroit Orchestra rather than to the individual who supplied the prize money. For income is taxable to its recipient irrespective of its source or of the ultimate beneficiary of consideration given in exchange. Thus, employees of charitable or educational institutions receive taxable income for their services though their pay commonly comes from donors who receive no financial advantages in exchange. Similarly here, what matters is that no gift was intended or given to petitioner by the supplier of the prize money. Because the $25,000 prize was not given gratuitously, the fact that petitioner's motivations in composing the symphony may not have been dominated by the hope of financial gain is no reason for concluding that this income should be tax-exempt.

The district court's conclusion that the prize was tax-exempt was based primarily upon an erroneous construction of the word "gift" in Section 22(b)(3). Insofar as this error of law is intermingled in the court's decision with the finding, which may fairly be called "factual," that the supplier of the prize intended to make a gift to petitioner, this

finding was squarely refuted by the documentary evidence in the record and was, therefore, clearly erroneous. Accordingly, the reversal of the district court's judgment by the court below was wholly proper.

II

The court below properly held that the tax should be computed under Section 107(b) of the Internal Revenue Code as though the prize had been ratably received over the thirty-six months preceding the close of the taxable year of receipt (1947), as the Commissioner had determined, rather than over the last thirty-six months (1937-1939) in which petitioner had worked on the symphony. The Commissioner's construction of the statutory language is not only a permissible one, but is the one the legislative history shows Congress to have intended. As originally drafted, the language unmistakably required the result achieved in this case. And the amendment altering the terms to those which were enacted was designed, not to change this result, but for the wholly different purpose of avoiding a windfall to taxpayers whose periods of thirty-six months of work required to qualify under Section 107(b) extended beyond the close of the taxable year. In any event, inasmuch as the statute readily bears the Commissioner's interpretation, any ambiguity should be resolved in his favor. For the Section creates an exception from the ordinary rules and

the taxpayer must bring himself within its letter. Petitioner has by no means made the necessary demonstration that the exception allowed him should have been broadened as he claims.

ARGUMENT

I

The Contest Prize Received by Petitioner Constituted Taxable Income, Not a Tax-Exempt Gift

The petitioner, a musician and composer by profession, received a $25,000 cash prize when his symphony, in the composition of which he had worked for over three years, was adjudged the best of those entered in the contest. This prize was the first of "three awards for the best symphonic works * * * written by native-born composers of North, Central and South America," works which had not been "published or publicly performed, either in full or in part, prior to entry" in the contest (R. 34, 35). In compliance with the terms and conditions of the contest, petitioner granted to the Detroit Orchestra various rights and licenses—including "synchronization rights as applied to motion pictures and all mechanical rights as applied to phonograph recordings," and the right to designate the publisher—in his winning composition (R. 35, 36). In these undisputed facts there is no basis for the claim that the prize was awarded as a gift—"for nothing", "gratuitously." On the contrary, the prize was awarded, as the contest

terms made clear, for petitioner's "work," and was properly held, therefore, to constitute taxable income.

A. *Prizes won competitively—where the contestants work or submit work products—are not gifts*

Section 22(a) of the Internal Revenue Code (Appendix, *infra,* p. 37) broadly defines gross income as including "gains, profits, and income" derived from compensation for services or from professions or vocations, "of whatever kind and in whatever form paid," and "gains or profits and income derived from any source whatever." Section 22(b)(3) (Appendix, *infra,* p. 37) excludes from gross income "The value of property acquired by gift, bequest, devise, or inheritance."[1] In enacting Section 22(a) Congress intended to exercise to the "full extent" its constitutional power to tax income. *Irwin* v. *Gavit,* 268 U. S. 161, 166; *Helver*v. *Stuart,* 317 U. S. 154, 169; *Douglas* v. *Willcuts,* 296 U. S. 1, 9. Conversely, since tax exemptions are matters of legislative grace, the exclusionary provisions of Section 22(b)(3) must be strictly construed. *Commissioner* v. *Jacobson,* 336 U. S. 28, 48-49. Cf. *Cornell* v. *Coyne,* 192 U. S. 418, 431-432; *Helvering* v. *Northwest Steel Mills,* 311 U. S. 46,

[1] Section 22(a) and 22(b)(3) of the Internal Revenue Code are derived from and are substantially the same as corresponding provisions in Sections 2(a) and 4 of the Revenue Act of 1916, c. 463, 39 Stat. 756.

49; *Helvering* v. *Ohio Leather Co.*, 317 U. S. 102, 106. In *Commissioner* v. *Jacobson, supra,* where it was held that the cancellation of a portion of the taxpayer's indebtedness resulted in taxable gain rather than a non-taxable gift, this Court said (pp. 48-49):

> * * * Both the general provision for taxation of income [Section 22(a)] and this provision for the exclusion of gifts from gross income [Section 22(b)(3)], for income tax purposes, have been in the Federal Income Tax Acts in substantially their present form since the Revenue Act of 1916. The contrast between the provisions is striking. The income taxed is described in sweeping terms and should be broadly construed in accordance with an obvious purpose to tax income comprehensively. The exemptions, on the other hand, are specifically stated and should be construed with restraint in the light of the same policy.

Every financial benefit derived from labor constitutes taxable "income" as defined in Section 22(a). *Old Colony Tr. Co.* v. *Commissioner,* 279 U. S. 716, 729-730; *Commissioner* v. *Smith,* 324 U. S. 177. See also Sections 29.22(a)-1 and 29.22(a)-2 of Treasury Regulations 111 (Appendix, *infra,* p. 39). On the other hand, the plain meaning of the word "gift," as it is used in Section 22(b)(3), "denotes * * * the receipt of financial advantages gratuitously." *Helvering* v. *Amer. Dental Co.*, 318 U. S. 322, 330. See also *Bogardus* v. *Commissioner,* 302 U. S. 34, 41; *Texas*

P. Ry. Co. v. *United States*, 286 U. S. 285, 289-290. Receipts of money or property are not excluded from gross income as gifts, therefore, unless they are received in exchange "for nothing." *Commissioner* v. *Jacobson, supra*, at 51. This practical test remains the same, insofar as the tax liability of the recipient is concerned, whether the payor acts with selfish or altruistic motives (*Helvering* v. *Amer. Dental Co., supra*, at 330-331), and even though the payment is voluntarily made (*Old Colony Tr. Co.* v. *Commissioner, supra*, at 730; *Noel* v. *Parrott*, 15 F. 2d 669 (C. A. 4), certiorari denied, 273 U. S. 754). Accordingly, any form of compensatory payment, whether it is based on services already rendered (and paid for, so as to discharge any contractual obligation to make further compensation) or to be rendered, represents income to the recipient and may not be treated for tax purposes as a gift.[2] A payment does not qualify as a tax-ex-

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[2] See *Bausch's Estate* v. *Commissioner*, 186 F. 2d 313 (C. A. 2); *Van Dusen* v. *Commissioner*, 166 F. 2d 647 (C. A. 9); *Noel* v. *Parrott*, 15 F. 2d 669 (C. A. 4), certiorari denied, 273 U. S. 754; *Baboquivari Cattle Co.* v. *Commissioner*, 135 F. 2d 114 (C. A. 9); *Acme Land & Fur Co.* v. *Commissioner*, 84 F. 2d 441 (C. A. 5); *Mulqueen* v. *Commissioner*, 65 F. 2d 365 (C. A. 2), certiorari denied, 290 U. S. 644; *Nickelsburg* v. *Commissioner*, 154 F. 2d 70 (C. A. 2); *Willkie* v. *Commissioner*, 127 F. 2d 953 (C. A. 6), certiorari denied, 317 U. S. 659; *Thomas* v. *Commissioner*, 135 F. 2d 378 (C. A. 5); *Lee* v. *Commissioner*, 143 F. 2d 4 (C. A. 7); *Poorman* v. *Commissioner*, 131 F. 2d 946 (C. A. 9); *International F. Corp.* v. *Commissioner*, 135 F. 2d 319 (C. A. 2). Conversely, additional compensation voluntarily paid for past services is deductible as a business expense. *Lucas* v. *Ox Fibre Brush Co.*, 281 U. S. 115; Section 29.23(a)-8 of Treasury Regulations 111.

empt gift if the recipient has been required either to do or to give something to earn it.

In harmony with the foregoing principles, the Treasury and the Tax Court have consistently held that one who competes for, and wins, a prize does not thereby receive a gift, but realizes taxable income. I. T. 1651, II-1 Cum. Bull. 54 (1923); I. T. 4667, II-1 Cum. Bull. 83 (1923); I. T. 3960, 1949-2 Cum. Bull. 13; I. T. 3987, 1950-1 Cum. Bull. 9; I. T. 4056, 1951-17 Int. Rev. Bull. 2; *Stein* v. *Commissioner*, 14 T. C. 494; *Brandenburg* v. *Commissioner*, 4 B. T. A. 103; *Waugh* v. *Commissioner*, decided April 5, 1950 (1950 P-H T. C. Memorandum Decisions, par. 50,095); *McDermott* v. *Commissioner*, 3 T. C. 929, reversed, 150 F. 2d 585 (C. A. D. C.). These rulings and decisions are grounded upon the plain fact that one who participates in, and wins, a contest receives his prize, not "for nothing," but for the successful labor or services he has performed to be selected as winner.[3]

The fact that contest prizes are "earned" rather than merely bestowed as "gifts" is reflected in

[3] There are, of course, various types of "prizes" and "awards" whose recipients are not required to compete for them and which may qualify as gifts under Section 22(b)(3). Thus, where a person's name was selected by chance, as part of a radio advertising scheme, and she was called by telephone and told that she was to receive a sum of money because of this stroke of good fortune, the Tax Court held the money so received, "without expectation or effort," to be a gift. *Washburn* v. *Commissioner*, 5 T. C. 1333, 1335. And the Treasury has not sought to tax an award for meritorious achievement which is "not a competitive prize." G. C. M. 5881, VIII-1 Cum. Bull. 68 (1929). Cf. note 10, *infra*.

familiar concepts of contract law. One who offers a prize to the winner of a contest and those who accept the offer by entering the contest and complying with its conditions are parties to a valid and enforceable contract based upon mutual consideration. "The competition itself is the agreed exchange for the promised prize." Restatement, Contracts, Section 521, *Comment a.* When his promise of a prize has led people to compete, the promisor is bound both to select a winner and to pay the prize to anyone who may have qualified for it under the terms of the contest. *Palmer* v. *Central Board of Education*, 220 Pa. 568; *Minton* v. *F. G. Smith Piano Co.*, 36 App. D. C. 137; *Groves* v. *Carolene Products Co.*, 324 Ill. App. 102; *Holt* v. *Rural Weekly Co.*, 173 Minn. 337; *Brown* v. *Morrisey & Walker*, 106 N. J. L. 307. There would, of course, be no such obligation if the promise of a prize were no more than a promise to make a gift.[4]

We submit, then, that the long-standing administrative view that a prize won through competition in a contest represents taxable income—

[4] We do not suggest that the absence of consideration renders a payment a gift. On the contrary, it is clear that payments made voluntarily, without consideration in the contract sense, may nevertheless constitute taxable income rather than exempt gifts under the Internal Revenue Code. See *Old Colony Trust Co.* v. *Commissioner*, 279 U. S. 716, 730; *Commissioner* v. *Jacobson*, 336 U. S. 28, 51; *Bausch's Estate* v. *Commissioner*, 186 F. 2d 313, 314 (C. A. 2). But where there is consideration—where the payor has assumed a legally enforceable obligation to make the award—an essential element of a gift is lacking. *Nickelsburg* v. *Commissioner*, 154 F. 2d 70, 71 (C. A. 2); *Noel* v. *Parrott*, 15 F. 2d 669 (C. A. 4), certiorari denied, 273 U. S. 754.

a view which has been adopted by the American Law Institute for its Restatement of the Federal Income Tax Statute (Tentative Draft No. 4, April 24, 1951)[5]—is sustained by conclusive factual and legal considerations which exclude such a prize from the category of "gift." Even if the propriety of this administrative application of the Code were less clear than it is, it would carry persuasive weight (cf. *Sanford's Estate* v. *Commissioner*, 308 U. S. 39, 52; *Jones* v. *Liberty Glass Co.*, 332 U. S. 524, 534), particularly in the light of its endorsement by the Tax Court (cf. *McDonald* v. *Commissioner*, 323 U. S. 57; *Commissioner* v. *Estate of Bedford*, 325 U. S. 283) and of the unchanged reenactments of the applicable statutory provisions since 1916 (cf. *Helvering* v. *Wilshire Oil Co.*, 308 U. S. 90; *Brewster* v. *Gage*, 280 U. S. 327). We think, however, that the position of the Treasury and the Tax Court in this instance is plainly required by the Congressional purpose in

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[5] The Restatement provides (Section X105(b) (18)) for inclusion in gross income of "Income from awards, prizes, and similar payments, subject to section X107(h)." The latter section excludes—

> (h) Certain Awards.—Awards, prizes, scholarships, and similar payments—
>
> (1) made primarily in recognition of scientific, educational, civic, or other meritorious achievement, *unless they are in recognition of activity undertaken in candidacy for their receipt or involve substantial future activity directly consequent upon their acceptance;* or
>
> (2) made to further the pursuit by a student of educational, vocational, or similar activities, and not as compensation for services. [Emphasis added.]

Section 22(a) "to tax income comprehensively" and by this Court's admonition that the exemption for gifts "should be construed with restraint in the light of the same policy." *Commissioner* v. *Jacobson, supra,* at 48-49.

B. *The petitioner, paid the promised award when his symphony was adjudged the best of those submitted, and required to relinquish property rights in the symphony in exchange for the prize, received no gift.*

If there could ever be any doubt that the competitive work of a successful contestant requires treatment of his prize as income rather than as a gift, such doubt would have no place here. Far from receiving $25,000 "gratuitously," the taxpayer in this case was awarded this sum because he had, through hundreds of hours of skilled and highly talented effort, produced a symphonic work which was deemed the best of those entered in the contest. The suggestion (Pet. Br. 18-19) that these labors should be ignored because they were performed before announcement of the contest entails a distinction between work and work product which can have no relevance to the problem before the Court. The simple fact of the matter is that the work of a composer, like many kinds of work, is such that it can be recorded, stored, and saved for subsequent use or sale or entry in a contest. It was precisely this type of *work*—explicitly described as such in the contest terms (R. 34, 35, 36,

37)—which the contest elicited and for which the prize was awarded. And so, wholly apart from the effort and expense to petitioner in having photostats made of his score (R. 21), in completing an entry blank (R. 36), and in mailing a copy of the composition for entry in the contest, the fact that it was work he submitted and work for which the prize was paid negates his contention that he received a gift.[6]

Still another factor in this case independently compels the same conclusion. Under the published terms and conditions of the contest, which petitioner was required to—and did—accept in order to be eligible for the prize, he granted to the Detroit Orchestra various rights and licenses in his composition (R. 35-36). These rights—including "all synchronization rights as applied to motion pictures and all mechanical rights as applied to phonograph recordings, electrical transcriptions and music rolls," the "exclusive right to authorize the first performance" of the composition, the "exclusive right to designate the publishers," and the right to give "at least one broadcast performance" within a year after the award—comprised a significant portion of the legally protected interests a composer has in the music he has created. No

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[6] For similar reasons, we believe the court erred in *McDermott* v. *Commissioner*, 150 F. 2d 585 (C. A. D. C.), upon which the taxpayer here relies heavily (Br. 11-14), in holding that a prize awarded in an essay contest was a gift, not taxable income. See pp. 21-25, *infra*.

stretch of language or excess of modesty can reduce them to "nothing" or justify the contention that the prize for which petitioner was required to relinquish them was given "gratuitously." Nor is it of any consequence that the Detroit Orchestra may have realized little or no financial gain from its acquisition of these rights (see Pet. Br. 11); as with similar rights in any work of art, the law recognizes their substance and affords them protection regardless of the value they may ultimately be assigned in the market-place.

The conclusion that the prize for which such rights were exchanged was not a gift is in no way altered by the fact that the Orchestra (and the public generally) rather than the payor of the prize (Reichhold) received the benefits of petitioner's music and of his rights therein (see Pet. Br. 10, 14, 18, 20). All that matters is that petitioner received the prize and that it was not, in the language of Section 22(b)(3), "acquired by gift * * *." For income is taxable to its recipient irrespective of who pays it or who derives the benefit of consideration given in exchange. Cf. *Baboquivari Cattle Co.* v. *Commissioner*, 135 F. 2d 114, 116 (C. A. 9); *Acme Land & Fur Co.* v. *Commissioner*, 84 F. 2d 441, 442 (C. A. 5); *Stein* v. *Commissioner*, 14 T. C. 494. Thus, services rendered by employees of an educational or charitable institution (*e. g.*, by a university professor or a hospital doctor) inure to the benefit of the institution

and the public it serves, not to those who endow the institution; yet the compensation paid for such services—whether by the institution out of funds already donated to it or by a donor on its behalf—unquestionably constitutes taxable income to the recipients.[7] Similarly here, the prize petitioner received for his winning composition no more represents a tax-free gift than the compensation received by musicians in the Detroit Orchestra for playing it—though the funds in both cases may well have emanated from the same philanthropically inspired source.

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[7] As the Tax Court observed in the *Stein* case, *supra*, a decision concurred in by the full court (pp. 500-501):

> * * * Any suggestion or thought that the mere fact that the money received by the ultimate recipient was supplied by way of gift or donation is alone sufficient to indicate or supply a basis for holding that as to the recipient the amount received was not income is, in our judgment, clearly outside the statute. One person may, for instance, by way of gift supply the money to pay some needy person for mowing the grass in his friend's yard, but no one would suggest that the money received by the mower of the grass was not to him income. Thousands of people every year make contributions to community funds and foundations and, even though as to the donors they are admittedly gifts, no one, we think, would seriously argue that the individuals engaged and employed in administering charity and supervising and directing the recreational activities of others and who are paid from these gifts and donations did not receive income within the meaning of the Constitution and the statute. It is accordingly our view that in the *McDermott* case, as well as in the argument here, too much importance was placed on the question whether the original furnisher of the money intended to make a gift and too little attention was paid to the question whether there was as to the recipient gain or compensation from labor or work at a business or profession.

No amount of emphasis upon the "philanthropic purposes" (Pet. Br. 14) of Reichhold can obscure the critical fact that these purposes did not result in the making of any gift to the petitioner. What Reichhold intended was to foster international amity through music and to dedicate to the public (through the Detroit Orchestra) the best new symphonic music written by American composers, as appears from the published purpose and rules of the contest (R. 33, 35). To accomplish that end Reichhold undertook, through a contest, to procure the production and submission of theretofore unpublished and unperformed symphonies, offering large money awards for the winning selections as inducements. In addition, he stipulated that various rights in the symphonies selected were to be surrendered to the Detroit Orchestra by the successful contestants. In substance and effect, he paid for the work and purchased the rights of the winning contestants with the prize money he supplied, and donated the rights to the Orchestra. That his purposes were philanthropic in a real sense is clear; it is equally clear however, that this philanthropy brought no gratuity to the present taxpayer. The public-spirited citizens who order monuments for the parks or finance picnics for underprivileged children make philanthropic donations. But the sculptors and grocers, like the petitioner in this case, whose goods and services the philanthropist procures and bestows, receive taxable income, not gifts, in return.

Mistakenly identifying himself as the object of Reichhold's donative intent, petitioner relies in vain upon this Court's decision in *Bogardus* v. *Commissioner*, 302 U. S. 34. There, holding that a payment by a corporation (Unopco) to former employees of a predecessor corporation as a "gift or honorarium" was a gift rather than compensation, the Court said (302 U. S. at 41):

> And most significant is the further stipulated fact that the disbursements were *not made or intended to be made* for any services rendered or to be rendered or for any consideration given or to be given by any of said employees, attorneys or experts to said Unopco corporation or to any of its stockholders. * * * There is entirely lacking the constraining force of any moral or legal duty as well as the incentive of anticipated benefit of any kind beyond the satisfaction which flows from the performance of a generous act.

Here, where the sole bases for the payment were petitioner's work and his relinquishment of property rights in that work, the decision in *Bogardus* serves only to point up the conclusion that the prize was not "acquired by gift * * *." For here there was consideration and both a moral and legal duty to pay the prize which had been promised for the work the contest solicited.

We think the contrary view announced in *McDermott* v. *Commissioner*, 150 F. 2d 585 (C.A.D.C.)

(Chief Judge Groner dissenting), is erroneous.[8] In that case, involving an essay contest prize awarded by the American Bar Association as a testamentary trustee, the court, pointing out that the Association derived no profit from the contest and that "the entire advantage accrued to petitioner [the prize winner] and the community," concluded that this "distinguishes" the contest from "contests operated for commercial purposes." 150 F. 2d at 588. But this distinction, whatever significance it may have elsewhere, affords no ground for concluding that the taxpayer whose work or services have redounded to the public benefit receives a tax-free gift when the prize he is awarded is given solely and precisely for the product of his labors, and not in any sense "for nothing." As we have shown above (pp. 18-20), income which is not in fact "acquired by gift" is not transformed into a tax-free gift because its payor derives no economic benefit from the payment.[9]

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[8] The *McDermott* case was followed in *Amirikian* v. *United States*, 100 F. Supp. 263 (D. Md.), pending on appeal to the United States Court of Appeals for the Fourth Circuit. In its opinion in *Amirikian*, rendered before the decision of the court of appeals below, the court also relied on the district court's decision in the instant case.

[9] It does not appear that the prize-winning essayist in the *McDermott* case was required to transfer any rights in his essay as a condition of receiving the prize. In this respect, the instant case contains additional grounds for rejecting the claim that the prize was a gift. We urge, however, that this added factor, while it would seem in itself sufficient to destroy the contention that the prize was received "for nothing," could

Equally mistaken, we believe, is the view of the majority in the *McDermott* case that, because it seemed "safe to say that the dominant motive of a normal contestant for this prize is not a hope of immediate financial gain" (150 F. 2d at 588), there was reason to consider the prize a gift. It is undoubtedly true that many educators, authors, artists, and others are led to their work by motives more lofty than the hope of monetary reward. But there is nothing in the Internal Revenue Code to suggest that the incomes derived from such work are to be treated as tax-exempt gifts.[10]

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be eliminated without altering the correctness of the decision below. Our position is that because the symphony in this case and the essay in *McDermott* were work products solicited and rewarded in the contests, the prizes in both instances were not gratuitous and hence were not gifts.

[10] As further support for its decision, the court, in the *McDermott* case, observed that the Commissioner "does not say that taxes have ever been collected on Nobel prizes, Guggenheim fellowships, Rhodes scholarships, Ross prizes, or any of the many scholarships and prizes which, like these, have long been awarded on a competitive basis to scientists, scholars, or students." Relying on this observation, petitioner argues (Br. 13-14) "that there is no more real reason to tax the award as income in this case than in the cases of 'Nobel prizes, Guggenheim fellowships, Rhodes scholarships,'" etc. This argument blandly assumes a factual identity between the enumerated "prizes" and "awards" and the contest prize involved here—an identity which clearly does not exist. (Cf. note 3, p. 13, *supra*.) Thus, even superficial examination of the Nobel and Rhodes grants reveals that to treat them as exempt from tax is in no way inconsistent with taxation of the contest prize in this case.

1. "The Nobel prizes * * * are not competitive." 16 *Encyclopedia Britannica* 477 (1951). Candidates enter no contest and submit no work; instead, prescribed institutions or persons make nominations to specifically designated prize-awarding institutions. Henriksson, *The Nobel Prizes and their Founder* (Alb. Bonniers Boktryckeri, Stockholm, 1938),

The Treasury has announced its intention not to follow the *McDermott* decision (I. T. 3960, 1949-2 Cum. Bull. 13); the Tax Court has seriously questioned its reasoning (*Stein* v. *Commissioner*, 14 T. C. 494; *Waugh* v. *Commissioner*, 1950 P-H T. C. Memorandum Decisions, par. 50,095); and

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pp. 8-10. Not only are entries neither sought nor submitted by contestants, but there is no promise of a prize to anyone to be selected from any group. Prizes may be, and are in fact, withheld in years when the awarding authorities see fit to make no selection. 16 *Encyclopaedia Britannica* 477-477B (1951).

2. Even more clearly, Rhodes scholarships are not awarded as prizes in contests in which candidates submit work and are rewarded for their work. Rhodes scholars are chosen on the basis of personal qualifications. 19 *Encyclopaedia Britannica* 266, 267 (1951). And while the selection is "competitive" in the sense that few are chosen though many wish to be, the successful candidate's superior qualifications are in no sense "consideration" for the scholarship, but are more appropriately described (in fact as well as in law) as the "condition" of the award. See 1 Williston, *Contracts* (rev. ed., 1936) § 112. It seems clear, therefore, that petitioner here is not helped by the view of the Bureau of Internal Revenue that where "a grant or fellowship is made for the training and education of an individual, either as a part of his program in acquiring a degree or in otherwise furthering his educational development, *no services being rendered as consideration therefor*, the amount of the grant is a gift which is excludable from gross income." I. T. 4056, 1951-17 Int. Rev. Bull. 2, 4 (emphasis added).

As for Guggenheim fellowships, these would appear to be taxable (under I. T. 4056, *supra*) on the ground that they are granted for work which the recipients are expected to perform, their basis being some specified project of research or creative activity. Cf. *Banks* v. *Commissioner*, 17 T. C. No. 167. It seems unnecessary here to consider the factual details of the Guggenheim awards to determine the propriety of holding them taxable. What is presently important is that where a contest (1) solicits work, (2) offers and pays a prize for the work, and (3) requires the surrender of property rights in the work in exchange for the prize, the prize cannot be deemed a gift.

in the instant case—the first occasion upon which the question has been re-presented to an appellate court—the court below has rejected it. We submit that the court below was correct—that unless the meaning of the word "gift", is to be stretched far beyond its meaning in common speech and in this Court's decisions construing Section 22(b)(3) of the Internal Revenue Code, a prize which is offered and paid for the product of talented professional labor is taxable income to its recipient.

C. *Based upon the application of an incorrect interpretation of "gift" in Section 22(b)(3) to uncontroverted facts, the judgment of the district court was properly reversed by the court below.*

As the court below pointed out (R. 39), the facts necessary to decision in this case are undisputed. Applying to these undisputed facts a mistaken view of the law, the district court misconstrued the meaning of the word "gift" in Section 22(b)(3) and drew from this misconstruction its conclusion that the prize petitioner received was not taxable income. Because the district court's decision was predicated upon "erroneous legal standards," its reversal by the court below was clearly proper. *Helvering* v. *Amer. Dental Co.*, 318 U. S. 322, 330. For the exemption of gifts in Section 22(b)(3) does not leave the trial court "free to determine at will or upon evidence and without judicial review

the tests to be applied to facts to determine whether the result is or is not a gift.'" *Id.* at 331. Cf. *Commissioner* v. *Jacobson*, 336 U. S. 28.[11]

That the conclusions of the district court held erroneous by the court below were primarily conclusions of law rather than fact becomes apparent from a brief analysis of the two decisions in the light of the undisputed facts. And insofar as the district court's decision may be said to have entailed factual inferences, such inferences were "clearly erroneous" and were correctly rejected by the court below.[12]

1. In support of its decision, the district court pointed out (R. 10, 29-31) that petitioner's symphony was not originally composed for the contest and was not produced with the expectation of financial gain. Without questioning these facts (see R. 41), the court below held that petitioner's motivations when he wrote the symphony could not render the prize he was paid for it a gift (R. 43). We think the opinion below and our arguments here (pp. 16-17, 23 *supra*) sufficiently demonstrate the correctness of this conclusion.

2. The district court was of the opinion (R. 10, 29-30) that the prize was a gift because its payor (Reichhold) derived no financial gain from the

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[11] In the *McDermott* case, upon which petitioner relies here, the Court of Appeals, reversing the Tax Court, treated as an issue of law the question whether the essay contest prize there involved was a gift.

[12] Rule 52(a), Fed. Rules Civ. Proc.; *United States* v. *Gypsum Co.*, 333 U. S. 364, 395-396; *United States* v. *Yellow Cab Co.*, 338 U. S. 338, 342.

contest. Agreeing that Reichhold sought no tangible benefit for himself, the court below properly ruled that this made no difference, that petitioner had nevertheless "received the prize as a result of his labors just as much as though he had sold it or had been paid for its use" (R. 44). See pp. 18-22, *supra*.

3. In his findings of fact and opinion, the district judge stated that Reichhold's purpose was to "'give'—not to employ or to buy or sell" (R. 10, 30). This statement would seem to be simply a reiteration of the erroneous legal conclusion that there had been a gift. But if this finding, with its reference to Reichhold's "purpose," might be considered a factual finding of an intent to bestow a gift upon petitioner, it is nevertheless without support in the record. The only evidence of Reichhold's purpose is found in the terms of the contest he sponsored, and it is clear that these contemplated no gift to the winner of the contest. Misdescription of the contest purpose as gift-making cannot alter the undisputed fact that the prizes were promised and paid for symphonic works and for rights in those works.

4. The district court's assertion (R. 31) that petitioner's grant of rights in his composition to the Orchestra "hasn't anything to do with the twenty-five thousand dollar prize" may fairly be described as a finding of fact and presumably accounts in part for the court's decision. But this finding is flatly refuted by the documentary evi-

dence, which is the only evidence on the point, and must be rejected as clearly erroneous. Under paragraphs 10 to 13 of the "Terms and Conditions" of the contest (R. 35) as well as paragraphs 4 to 6 of the "Official Entry Blank" petitioner signed (R. 36), each contestant obligated himself, in the event his entry received an award, to grant the specified rights to the Orchestra. This obligation was positive and unequivocal. It was admittedly fulfilled by petitioner (R. 10). The conclusion that it hadn't "anything to do" with the prize is wholly baseless. At any rate, even if it were correct, this conclusion would not support the decision that petitioner had received a gift. For, as the court below pointed out (R. 43-44), petitioner's professional efforts in writing the symphony and his participation in the contest are in themselves sufficient to prevent treatment of the prize as a gratuity. See pp. 16-17 and note 9, *supra*.

II

The Commissioner and the Court Below Correctly Ruled That the Prize Was to Be Taxed Ratably Over the Thirty-six Months Ending with the Close of the Year in Which It Was Received, Not Over the Last Thirty-six Months of the Time During Which Petitioner Worked on the Symphony

Income must be reported by a taxpayer on the cash basis in the taxable year of its receipt, regardless of when it is earned. Section 107 of the Internal Revenue Code is designed to grant relief from this

requirement, under certain conditions, to taxpayers who perform work over an extended period but receive the bulk of their compensation in a single taxable year. Section 107(a) deals with compensation for personal services, while Section 107(b) (Appendix, *infra*, pp. 38-39),[13] involved here, deals with income from an "artistic work or invention."

The first sentence of Section 107(b) defines an "artistic work or invention", for purposes of this subsection, as one "the work on which * * * covered a period of thirty-six calendar months or more * * *." The remaining sentence then provides that if in the taxable year the taxpayer's income from an artistic work or invention is not less than eighty percent of the income "in the taxable year plus the gross income therefrom in previous taxable years and the twelve months immediately succeeding the close of the taxable year," then the tax attributable to the income of the taxable year may be computed as though it had "been received ratably over that part of the period preceding the close of the taxable year but not more than thirty-six calendar months."

It is undisputed that petitioner is entitled to the benefit of Section 107(b). The issue here is whether petitioner's $25,000 prize should be taxed ratably over the thirty-six months ending with the close of the taxable year (1947) in which it was

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[13] Section 107(b) was added to the Code by Section 139(a) of the Revenue Act of 1942, c. 619, 56 Stat. 798, 837.

received, as the Commissioner ruled, or over the last thirty-six months (1937-1939) of the period during which petitioner wrote the symphony, as he claims. We think the court below was correct in sustaining the Commissioner's ruling.

Read naturally, the provision permitting apportionment of income in the second sentence of Section 107(b)—"ratably over that part of the period preceding the close of the taxable year but not more than thirty-six calendar months"—would seem to refer to a period ending with the close of the taxable year and extending back a maximum of thirty-six months, as the Commissioner and the court below have held. And when the legislative history of the language is examined, it becomes apparent that this is what Congress meant. As originally introduced, the phrase in question read "ratably over the period of thirty-six calendar months ending with the close of the taxable year." H. R. 7378, 77th Cong., 2d Sess., Sec. 128. In that form the language unquestionably accomplished the result for which we contend. Changing the words to those which were enacted into law, the Senate Committee on Finance explained that the amended terms provided for permissible taxation of the kind of income affected as though it had "been received ratably over (1) the part of the period of the work which preceded the close of the taxable year, or (2) a period of 36 calendar months, *whichever of such periods is the shorter.*" S. Rep. No. 1631, 77th

Cong., 2d Sess., p. 109. (Emphasis added.) [14] Agreeing to this change in conference, the conferees said of it simply that it "clarifies the language of the House bill." H. Conf. Rep. No. 2586, 77th Cong., 2d Sess., p. 42.

These developments strongly support the conclusion that the Senate amendment was not designed to change the allowable period of allocation from one ending with the close of the taxable year to one covering any 36 months in the past when work on the artistic product or invention was done. Instead, the amendment was intended to deal with situations where part of the 36 months of work required to qualify the income from the artistic product for the benefits of Section 107(b) occurs after the close of the taxable year. Compare *Example (1)* with *Example (2)* under Section 29.107-2, Treasury Regulations 111, Appendix, *infra*, pp. 40-41). In such cases, under the House version, the taxpayer would have been entitled to prorate his income back over a full 36 months, a period greater than the period of his work preceding the close of the taxable year. That it was this kind of windfall the Senate amendment was intended to prevent is made unmistakably clear by the fact that

[14] Treasury Regulations 111, Sec. 29.107-2 (Appendix, *infra*, p. 40), in which petitioner claims to find support for his position (Br. 25), follow the quoted language of the Senate report practically verbatim. As we show in the text following, and as the Commissioner's application of the regulation further demonstrates, this language was not designed for the purpose to which petitioner would put it.

both the language adopted and the explanatory Senate Committee Report contemplate apportionment over a *maximum* of 36 months, anticipating cases where the allowable period will be shorter. Since an artistic work or invention does not qualify at all under Section 107(b) unless its completion required 36 months or more of work, the coupling of the 36-month limit with the requirement that it be "that part of the period preceding the close of the taxable year" (Section 107(b)) can only be explained by reference to cases of the type we describe.

Focusing on such cases, it was appropriate for the Senate Committee to refer to "the part of the period of the work which preceded the close of the taxable year * * *." For the draftsmen's attention was directed to periods of work surrounding the close of the taxable year, and their concern was to prevent tax diminution by proration of income over a period greater than the duration of the work preceding the close of the taxable year. We think the nature of the amendment and the explanation for it indicate (1) that the legislators were not considering the case, like the one here, where the period of the work ends before the taxable year, and (2) that there was no intention to alter the House bill's provision that the allowable period for attribution of income should be a period ending with the close of the taxable year.

This view seems particularly compelling in the light of the Conference Report's declaration that

the Senate amendment had merely "clarified" the provision in the House bill. While the present litigation suggests that the clarification may not have been wholly felicitous, it is scarcely reasonable to suppose that the conferees would have so innocuously described such a relatively drastic change as alteration of the allowable period from one ending with the close of the taxable year to one determined by selecting 36 months from an anterior period when the work was done.

Moreover, if the amendment was designed for the result petitioner urges, it is unlikely that Congress would have provided for allocation to 36 months of the period of actual work without indicating *which* months were to be selected when the "period preceding the close of the taxable year" exceeded 36 months. In a supposed case where the total period of work consisted of 40 months, 28 preceding and 12 following the close of the taxable year, it is perfectly clear what Congress intended when it limited allocation to "*that part* of the period preceding the close of the taxable year * * *." But where, as in this case, the period of actual work exceeds 36 months (here, from the fall of 1936 through 1939), and the entire period precedes the close of the taxable year, to which "part" was Congress referring? The statute does not say—because, in our view, Congress intended that the period of allocation should extend in every case from the close of the taxable year to a date not more than 36 months prior thereto.

Petitioner, applying his interpretation of the statute, has supplied the omission that interpretation leaves by claiming that the prize money should be taxed as though it had been received ratably over the 36 months of the years 1937 through 1939. But nothing in Section 107(b) explains why this period rather than the 36 months beginning with the fall of 1936 should be chosen. Indeed, the incompleteness of the scheme created by petitioner's construction is nowhere better illustrated than by petitioner's own statement (Br. 25) that allocation should be allowed "under any combination of months equaling thirty-six in which the work was performed."

In *Williams* v. *United States*, 84 F. Supp. 362, which adopts petitioner's view,[15] the Court of Claims concluded that the expression " 'the period' in the second sentence [of Section 107(b)] refers, grammatically and logically, to the period referred to in the first sentence, which is the period when the work was done." 84 F. Supp. at 367. The court went on to observe that "the fact that the period

[15] Though they are also relied upon by petitioner (Br. 26), neither *Richardson* v. *Commissioner*, 14 T. C. 547, nor *Terrell* v. *Commissioner*, 14 T. C. 572, involved the issue presented here. In the *Richardson* case, the income was received in the same year in which the work was completed, and the only question was whether the work had extended over a period of thirty-six months as required by the first sentence of Section 107(b). The *Terrell* case involved Section 107(a), the provisions of which differ from those of Section 107(b), and the only issue was whether the amount received in the taxable year met the requirement that it be eighty percent of the total compensation received.

referred to in the second sentence must precede the close of the taxable year suggests that it should immediately precede it," but concluded that the "grammatical and logical" import of the language overrode this suggestion. *Ibid.* The court conceded, moreover, that the Senate amendment to the House bill "may have been made primarily to limit the period of computation to the actual time of work * * * preceding the close of the taxable year, in a case where in fact some of the necessary thirty-six months of work took place after the taxable year * * *." *Ibid.* It held, however, that the language adopted in the amendment must be read as working the further result for which petitioner argues here.

Without repeating the countervailing arguments presented above, we submit that insofar as considerations of language, grammar, logic, and legislative history leave the issue, at the very least, doubtful, the doubt should be resolved in favor of the Commissioner's construction. For, as petitioner acknowledges (Br. 27), Section 107(b) "constitutes an exception to the general rules governing the taxation of income," and the "taxpayer claiming its benefits must bring himself within the letter of the Congressional grant." *Lindstrom* v. *Commissioner*, 149 F. 2d 344, 346 (C. A. 9). As Judge Learned Hand wrote, "the section is an exemption and as such must submit to close scrutiny; and—what is more important—Congress has been sparing in the relief given."

Smart v. *Commissioner*, 152 F. 2d 333, 335 (C. A. 2), certiorari denied, 327 U. S. 804. Here, where the language Congress wrote readily bears the Commissioner's construction, where legislative history testifies that this construction meets the critical test of fulfilling the Congressional purpose, and where the taxpayer's proposed alternative raises doubts which are in no way eased by the grammar and logic he invokes, petitioner has failed to sustain the burden of showing entitlement to a greater benefit than he has been allowed.

CONCLUSION

The judgment of the Court of Appeals is correct and should be affirmed.

Respectfully submitted,

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MARCH 1952.

Internal Revenue Code:

SEC. 22. GROSS INCOME.

(a) *General Definition.*—"Gross income" includes gains, profits, and income derived from salaries, wages, or compensation for personal service * * * of whatever kind and in whatever form paid, or from professions, vocations, trades, businesses, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; also from interest, rent, dividends, securities, or the transaction of any business carried on for gain or profit, or gains or profits and income derived from any source whatever.

* * * * *

(b) *Exclusions from Gross Income.*—The following items shall not be included in gross income and shall be exempt from taxation under this chapter:

* * * * *

(3) [As amended by Section 111(a) of the Revenue Act of 1942, c. 619, 56 Stat. 798]. *Gifts, bequests, devises and inheritances.*—The value of property acquired by gift, bequest, devise, or inheritance. * * *

* * * * *

(26 U.S.C. 1946 ed., Sec. 22.)

SEC. 107 [As added by Section 220(a) of the

Revenue Act of 1939, c. 247, 53 Stat. 862, and amended by Section 139(a) of the Revenue Act of 1942, *supra*, and Section 119(b) of the Revenue Act of 1943, c. 63, 58 Stat. 21].

COMPENSATION FOR SERVICES RENDERED FOR A PERIOD OF THIRTY-SIX MONTHS OR MORE AND BACK PAY.

* * * * *

(b) *Patent, Copyright, Etc.*—For the purposes of this subsection, the term "artistic work or invention," in the case of an individual means a literary, musical, or artistic composition of such individual or a patent or copyright covering an invention of or a literary, musical, or artistic composition of such individual, the work on which by such individual covered a period of thirty-six calendar months or more from the beginning to the completion of such composition or invention. If, in the taxable year, the gross income of any individual from a particular artistic work or invention by him is not less than 80 per centum of the gross income in respect of such artistic work or invention in the taxable year plus the gross income therefrom in previous taxable years and the twelve months immediately succeeding the close of the taxable year, the tax attributable to the part of such gross income of the taxable year which is not taxable as a gain from the sale or exchange of a capital asset held for more than 6 months shall not be greater than the aggregate of the taxes attributable to such part had it been received ratably over that part of the period preceding the close

of the taxable year but not more than thirty-six calendar months.

* * * * *

(26 U.S.C. 1946 ed., Sec. 107.)

Treasury Regulations 111, promulgated under the Internal Revenue Code:

Section 29.22(a)-1. *What Included in Gross Income.*—Gross income includes in general compensation for personal and professional services, business income, profits from sales of and dealings in property, interest, rent, dividends, and gains, profits, and income derived from any source whatever, unless exempt from tax by law. * * *

* * * * *

Section 29.22(a)-2. *Compensation for Personal Services.*—Commissions paid salesmen, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips, pay of persons in the military or naval forces of the United States, retired pay of Federal and other officers, and pensions or retiring allowances paid by the United States (unless expressly exempt) or by private persons are income to the recipients; as are also marriage fees, baptismal offerings, sums paid for saying masses for the dead, and other contributions received by a clergyman, evangelist, or religious worker for services rendered. * * *

* * * * *

Section 29.107-2. [As amended by T. D. 5458, 1945 Cum. Bull. 45]. *Artistic Work or Invention.*—Section 107(b) provides that if, in the taxable year, the gross income of an individual from an artistic work or invention of such individual covering a period of 36 calendar months or more (from the beginning to the completion thereof) is not less than 80 per cent of the sum of (1) the gross income therefrom in the taxable year, and (2) the gross income therefrom in previous taxable years and in the 12 months following the close of the taxable year, then the tax attributable to such gross income in the taxable year shall not be greater than the aggregate of the taxes attributable thereto had it been received ratably over (1) the part of the period of the work which precedes the close of the taxable year, or (2) a period of 36 calendar months, whichever of such periods is the shorter. * * *

* * * * *

The method of allocating the gross income from the artistic work or invention to the taxable years in which falls any of the calendar months (not exceeding 36 calendar months) included within the part of the period of work which precedes the close of the current taxable year may be illustrated by the following examples:

Example (1). On October 1, 1942, A, an individual, who makes his returns on a calendar year basis and on the basis of cash receipts and disbursements, receives $36,000 in full pay-

ment for a musical composition, the work on which was commenced by A on July 10, 1938, and completed on January 29, 1943. Although the period of work covers 55 calendar months, allocations may be made to only the last 36 calendar months included within the part of the period of work which precedes the close of 1942 (the current taxable year). Therefore, $1,000 ($36,000 divided by 36) must be allocated to each of the 36 calendar months preceding January 1, 1943. Accordingly, $12,000 is allocated in 1940, $12,000 in 1941, and $12,000 in 1942 (the current taxable year).

Example (2). Assume the same facts as in example (1) except that the period of work was commenced by A on July 1, 1941, and completed on September 1, 1944. Although the period of work covers 38 calendar months, allocations may be made to only the 18 calendar months which are included within the part of the period of work which precedes the close of 1942 (the current taxable year). Therefore, $2,000 ($36,000 divided by 18) must be allocated to each of 18 calendar months preceding January 1, 1943. Accordingly, $12,000 is allocated to 1941, and $24,000 to 1942 (the current taxable year).

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